

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-100533
	:	TRIAL NO. B-1002143
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
GREGORY D. WISE,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Gregory Wise was indicted for two counts of rape in violation of R.C. 2907.02(A)(1)(b) and two counts of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A).² In each count, the victim was his wife's brother. The trial court consolidated this case with another against Wise that concerned sexual abuse against his wife's sister.³

When the defense rested at trial, Wise moved for an acquittal under Civ.R. 29. The trial court granted his motion with respect to the case involving his sister-in-law, but not with respect to the case involving his brother-in-law. The jury found Wise guilty as charged in that case, and the trial court sentenced Wise to consecutive terms of confinement of ten years for each count of rape and five years for each count of

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

² Case No. B-1002143.

³ Case No. B-0908395.

unlawful sexual conduct with a minor, for a total of 30 years of confinement. For the following reasons, we affirm the judgment of the trial court.

In his first assignment of error, Wise contends that the trial court erred in consolidating the two cases for trial. We disagree.

“The law favors joining multiple offenses in a single trial under CrimR. 8(A) if the offenses charged are of the same or similar character.”⁴ “To prevail on a claim that the trial court erred in consolidating charges for trial, the defendant must demonstrate affirmatively (1) that his rights were prejudiced, (2) that at the time that the trial court ruled on the motion to consolidate, he provided sufficient information so that it could weigh the considerations favoring joinder against the defendant’s right to a fair trial, and (3) that given the information provided to the court, it abused its discretion in consolidating the charges for trial.”⁵ The state may negate a claim of prejudice by showing either that (1) the state could have introduced evidence of one crime in the trial of the other under Evid.R. 404(B) had they been tried separately, or that (2) the evidence presented at trial was simple and direct.⁶ “Generally, under the simple-and-distinct test, if the evidence of each offense is direct and uncomplicated, it is presumed that the trier of fact is capable of segregating the proof and not cumulating evidence of the various offenses being tried.”⁷

Having thoroughly reviewed the record, we hold that the evidence presented at trial was simple and direct. The testimony concerned crimes against only two victims, and Wise has not demonstrated how this uncomplicated evidence could have confused the jury. Accordingly, we overrule this assignment of error.

⁴ *State v. Lott* (1990), 51 Ohio St.3d 160, 163, 555 N.E.2d 293 (internal quotations omitted).

⁵ *State v. Clifford* (1999), 135 Ohio App.3d 207, 211, 733 N.E.2d 621.

⁶ *Lott*, 51 Ohio St.3d at 163.

⁷ *State v. Echols* (1998), 128 Ohio App.3d 677, 694, 716 N.E.2d 728.

We consider Wise's second, third, and fourth assignments of error together. In his second assignment of error, Wise argues that his convictions were not supported by sufficient evidence. In his third assignment of error, Wise argues that his convictions were contrary to the manifest weight of the evidence. And in his fourth assignment of error, Wise argues that the trial court erred in denying his motion for an acquittal with respect to the counts involved in this case.

When reviewing the sufficiency of the evidence to support a criminal conviction, we must examine the evidence admitted at trial in the light most favorable to the state. We then must determine whether the evidence could have convinced any rational trier of fact that the essential elements of the offense were proved beyond a reasonable doubt.⁸ We use the same test to determine whether a trial court properly overruled a defendant's Crim.R. 29 motion for an acquittal.⁹ When reviewing the weight of the evidence, we act as a "thirteenth juror."¹⁰ We must review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice in finding the defendant guilty.¹¹ A new trial should be granted only in exceptional cases whether the evidence weighs heavily against the conviction.¹²

The jury found Wise guilty of rape in violation of R.C. 2907.02(A)(1)(b), which prohibits sexual conduct with anyone less than thirteen years of age, whether or not the offender knows the age of the other person. Wise was also found guilty of unlawful sexual conduct with a minor in violation of R.C. 2904.04(A), which prohibits anyone who is eighteen years of age or older from engaging in sexual conduct with another

⁸ See *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

⁹ *State v. Love*, 1st Dist. No. C-100597, 2011-Ohio-2053, at ¶6.

¹⁰ See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

¹¹ *Id.* (citing *Tibbs v. Florida* [1982], 457 U.S. 31, 42, 102 S.Ct. 2211).

¹² *Id.*

“when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.”

At trial, Wise’s brother-in-law provided detailed testimony that Wise had sexually abused him when he was 12, 13, and 14 years old. Based on his testimony and other evidence adduced at trial, we are convinced that Wise’s convictions were supported by sufficient evidence and were not contrary to the manifest weight of the evidence. We, therefore, overrule his second, third, and fourth assignments of error.

In his fifth assignment of error, Wise contends that his sentences were excessive, and that the trial court was required to make judicial findings of fact before imposing his consecutive sentences. Wise’s sentences were within the range provided by statute for first-degree and third-degree felonies.¹³ And the trial court was not obligated to engage in judicial fact-finding prior to making Wise’s sentences consecutive.¹⁴ Accordingly, we overrule this assignment of error.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., HENDON and FISCHER, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 3, 2011

per order of the Court _____.
Presiding Judge

¹³ Compare R.C. 2929.14(A)(1) with R.C. 2907.02(B) and 2907.04(B)(3).

¹⁴ See *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, paragraphs two and three of the syllabus.